

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

FONTEM VENTURES B.V. and)	
FONTEM HOLDINGS 1 B.V.,)	
)	
Plaintiffs,)	
)	
v.)	1:16-CV-1255
)	
R.J. REYNOLDS VAPOR)	
COMPANY,)	
)	
Defendant.)	

CLAIM CONSTRUCTION ORDER

This matter is before the Court for claim construction of terms in United States Patent Nos. 8,365,742 (the “’742 Patent”), 8,899,239 (the “’239 Patent”), 8,490,628 (the “’628 Patent”), 8,893,726 (the “’726 Patent”), 9,326,548 (the “’548 Patent”), 9,326,549 (the “’549 Patent”), 9,370,205 (the “’205 Patent”), 8,375,957 (the “’957 Patent”), 8,393,331 (the “’331 Patent”), 8,863,752 (the “’752 Patent”), 9,326,550 (the “’550 Patent”), 9,326,551 (the “’551 Patent”), 9,339,062 (the “’062 Patent”), 9,364,027 (the “’027 Patent”), and 9,456,632 (the “’632 Patent”).

The parties agree on the term “atomizer assembly,” and the Court adopts the agreed-upon claim construction set forth at Doc. 119-1 at 2 n.1. This construction is incorporated herein by reference, in full.

The parties disagree on the construction of numerous other terms in these patents and submit the following proposed constructions:

Term/Phrase	Fontem's Proposed Construction	Reynolds' Proposed Construction
atomizer '628 Patent: claims 1, 7–8 '726 Patent: claims 15, 17 '549 Patent: claims 12–13 '742 Patent: claims 2–3 '548 Patent: claims 1, 8, 11 '205 Patent: claims 1–2, 9–10, 16, 20 '331 Patent: claims 1–2 '632 Patent: claim 14 '957 Patent: claims 1, 10, 17 '752 Patent: claims 1, 4–5, 10, 14–15 '550 Patent: claim 1 '551 Patent: claims 1–4, 11 '062 Patent: claims 1, 12	component(s) that convert(s) liquid into aerosol or vapor	a liquid absorbing body with an internal atomizing element
atomizer '239 Patent: claim 13	component(s) that convert(s) liquid into aerosol or vapor	Original: a nozzle with an internal heating element Modified: a heated tube within which vaporization occurs
atomization chamber '632 Patent: claims 14–16	space where atomization occurs	a chamber or cavity formed in the liquid absorbing body of the atomizer assembly within which atomization occurs

Term/Phrase	Fontem's Proposed Construction	Reynolds' Proposed Construction
cavity '726 Patent: claim 17 '205 Patent: claims 9, 20 '331 Patent: claims 1–2	hollow space	a hollow space within a solid object
porous component '742 Patent: claims 2–3 '548 Patent: claims 1, 8–9 '632 Patent: claim 14 '549 Patent: claims 12, 17–18 '957 Patent: claims 1, 9–10 '752 Patent: claims 4–5	no construction necessary	a porous material configured for receiving an internal atomizing element
frame '742 Patent: claims 2, 3 '548 Patent: claims 1, 3, 4, 8, 9, 10, 11, 14 run-through hole '742 Patent: claims 2, 3 '548 Patent: claims 1, 8, 11	frame: rigid structure run-through hole: no construction necessary, or in the alternative, a hollow space extending through	in the phrase “frame . . . having a run-through hole,” “ frame ” means “a rigid structure that provides shape to the porous component”, and “ run-through hole ” means “an enclosed passageway extending completely through the frame”

Term/Phrase	Fontem's Proposed Construction	Reynolds' Proposed Construction
liquid supply '628 Patent: claims 1, 5, 7, 8 '549 Patent: claims 12, 13, 17, 19, 21 '331 Patent: claims 1, 2 '742 Patent: claim 3 '205 Patent: claim 1 '550 Patent: claim 1 '551 Patent: claims 1, 11 '062 Patent: claims 1, 12	no construction necessary, or in the alternative, a store for liquid	a porous material for storing liquid within a cigarette liquid bottle
liquid storage body '726 Patent: claim 15	no construction necessary, or in the alternative, a body for storing liquid	a porous material for storing liquid within a cigarette liquid bottle (same as "liquid supply")
liquid storage component '742 Patent: claim 2 '548 Patent: claims 1, 8, 11 '632 Patent: claim 14	no construction necessary, or in the alternative, a component for storing liquid	a porous material for storing liquid within a cigarette liquid bottle (same as "liquid supply")
liquid storage '752 Patent: claims 1, 14	no construction necessary, or in the alternative, a store for liquid	a porous material for storing liquid within a cigarette liquid bottle (same as "liquid supply")

Term/Phrase	Fontem's Proposed Construction	Reynolds' Proposed Construction
solution storage area '957 Patent: claims 1, 10	no construction necessary, or in the alternative, an area for storing a solution	the area in a cigarette liquid bottle occupied by a porous material for storing liquid
The phrase "at a first end" when used in connection with an LED or light source '549 Patent: claims 12, 17 '239 Patent: claims 1, 13 '331 Patent: claims 1, 2 '027 Patent: claims 1, 12	no construction necessary, or in the alternative, "end" means "tip"	the tip or the extreme end or last part lengthwise and does not include the extremes of the radius that form the side wall
longitudinal axis '628 Patent: claims 1, 7–8 '548 Patent: claims 1, 8, 11–12 '549 Patent: claims 12, 17, 19 '205 Patent: claims 1, 9, 16 '632 Patent: claim 14 '550 Patent: claim 1 '551 Patent: claims 1–2, 11	longest axis	the center axis of the device running in the direction of airflow

Term/Phrase	Fontem's Proposed Construction	Reynolds' Proposed Construction
'062 Patent: claims 1, 12		

Docs. 119-1, 134, and 135.

The Court held a claim construction hearing on February 28 and March 1, 2018.

The Court finds the claim language to be clear and construes the disputed claims as follows:

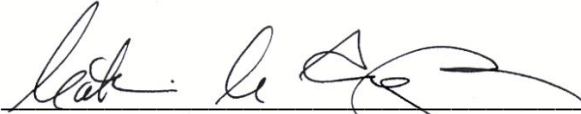
Term/Phrase	Court's Construction
atomizer '628 Patent: claims 1, 7–8 '726 Patent: claims 15, 17 '549 Patent: claims 12–13 '742 Patent: claims 2–3 '548 Patent: claims 1, 8, 11 '205 Patent: claims 1–2, 9–10, 16, 20 '331 Patent: claims 1–2 '632 Patent: claim 14 '957 Patent: claims 1, 10, 17 '752 Patent: claims 1, 4–5, 10, 14–15 '550 Patent: claim 1 '551 Patent: claims 1–4, 11 '062 Patent: claims 1, 12	component(s) that convert(s) liquid into aerosol or vapor
atomizer '239 Patent: claim 13	component(s) that convert(s) liquid into aerosol or vapor
atomization chamber '632 Patent: claims 14–16	space where atomization occurs
cavity '726 Patent: claim 17 '205 Patent: claims 9, 20 '331 Patent: claims 1–2	hollow space

Term/Phrase	Court's Construction
<p>porous component</p> <p>'742 Patent: claims 2–3 '548 Patent: claims 1, 8–9 '632 Patent: claim 14 '549 Patent: claims 12, 17–18 '957 Patent: claims 1, 9–10 '752 Patent: claims 4–5</p>	<p>no construction necessary</p>
<p>frame</p> <p>'742 Patent: claims 2, 3 '548 Patent: claims 1, 3, 4, 8, 9, 10, 11, 14</p> <p>run-through hole</p> <p>'742 Patent: claims 2, 3 '548 Patent: claims 1, 8, 11</p>	<p>frame: rigid structure</p> <p>run-through hole: no construction necessary</p>
<p>liquid supply</p> <p>'628 Patent: claims 1, 5, 7, 8 '549 Patent: claims 12, 13, 17, 19, 21 '331 Patent: claims 1, 2 '742 Patent: claim 3 '205 Patent: claim 1 '550 Patent: claim 1 '551 Patent: claims 1, 11 '062 Patent: claims 1, 12</p>	<p>no construction necessary</p>
<p>liquid storage body</p> <p>'726 Patent: claim 15</p>	<p>no construction necessary</p>
<p>liquid storage component</p> <p>'742 Patent: claim 2 '548 Patent: claims 1, 8, 11 '632 Patent: claim 14</p>	<p>no construction necessary</p>
<p>liquid storage</p>	<p>no construction necessary</p>

Term/Phrase	Court's Construction
'752 Patent: claims 1, 14	
solution storage area	no construction necessary
'957 Patent: claims 1, 10	
The phrase "at a first end" when used in connection with an LED or light source	no construction necessary
'549 Patent: claims 12, 17 '239 Patent: claims 1, 13 '331 Patent: claims 1, 2 '027 Patent: claims 1, 12	
longitudinal axis	longest axis
'628 Patent: claims 1, 7–8 '548 Patent: claims 1, 8, 11–12 '549 Patent: claims 12, 17, 19 '205 Patent: claims 1, 9, 16 '632 Patent: claim 14 '550 Patent: claim 1 '551 Patent: claims 1–2, 11 '062 Patent: claims 1, 12	

IT IS SO ORDERED.

This the 12th day of March, 2018.


UNITED STATES DISTRICT JUDGE